

IN THE
United States Circuit
Court of Appeals
FOR THE NINTH CIRCUIT 18

CRYSTAL COPPER COMPANY,
A Corporation,

Plaintiff in Error

vs.

PETE GAIDO and BATT TAMIETTI,

Defendants in Error

PLAINTIFF IN ERROR'S PETITION FOR
REHEARING

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PETE GAIDO and BATT TAMIETTI,
Defendants in Error.

4486

PETITION FOR REHEARING:

Comes now Crystal Copper Company, a corporation, plaintiff in error in the above entitled cause, and moves the court for a rehearing for that the court erred in deciding:

“In view of a retrail of the action * * *”

This court in its opinion, correctly defined the issues as follows:

“The principal question discussed in the briefs of counsel and on the oral argument before this court is: Was there a sublease of the mine from the defendant to the plaintiffs and were they mining partners, as that relation is defined by the Code of Montana?”

This court correctly held that:

“The above testimony is as favorable to the contention made in behalf of the plaintiffs as any to be found in the record and we have little hesitation in saying that it falls far short of establishing such an interest in the mine as will support the claim that a mining partnership existed between those actually engaged in working the mine. *Wheeler v. West*, 71 Cal. 126; *Hudepohl v. Mining and Water Co.*, 80 Cal. 553; *Micalek v. New Almaden Co.*, supra.”

It is quite apparent from the decision of the court that no issuable facts remain to be decided and any retrial of the action would necessarily involve great expense to the parties and would be fruitless.

From the opinion of this court it is manifest that no mining partnership existed between the parties and that none of the parties acquired any interest in the mine, and it follows as a matter, of course, that if any of them have claim against the Crystal Copper Company, it must necessarily be upon a quantum meruit for work, labor and services performed.

The opinion should therefore be modified by striking therefrom the words: “In view of a retrial of the action,” and substituting therefor the words: “In view of a final decision.”

Respectfully submitted,

C. S. WAGNER,

WALKER & WALKER

Attorneys for Plaintiff in Error

STATE OF MONTANA, }
COUNTY OF SILVER BOW, } ss.

I, Thomas J. Walker, one of the attorneys for the Crystal Copper Company, a corporation, plaintiff in error, in the above entitled cause do hereby certify and declare that the above entitled motion for rehearing is in my judgment well founded and that the said petition is not intersposed for delay.

Dated this 16th, day of June, 1925.

THOMAS J. WALKER

